

§ 3.153

request, requested either before or after disallowance of the surviving spouse's claim, an award for the child or children will be made as though the disallowed claim had been filed solely on their behalf. Otherwise, payments may not be made for the child or children for any period prior to the date of receipt of a new claim.

(4) Where payments of pension, compensation or dependency and indemnity compensation to a surviving spouse have been discontinued because of remarriage or death, or a child becomes eligible for dependency and indemnity compensation by reason of attaining the age of 18 years, and any necessary evidence is submitted within 1 year from date of request, an award for the child or children named in the surviving spouse's claim will be made on the basis of the surviving spouse's claim having been converted to a claim on behalf of the child. Otherwise, payments may not be made for any period prior to the date of receipt of a new claim.

(Authority: 38 U.S.C 501)

[50 FR 25981, June 24, 1985]

CROSS REFERENCES: State Department as agent of Department of Veterans Affairs. See § 3.108. Change in status of dependents. See § 3.651.

§ 3.153 Claims filed with Social Security.

An application on a form jointly prescribed by the Secretary and the Secretary of Health, Education, and Welfare filed with the Social Security Administration on or after January 1, 1957, will be considered a claim for death benefits, and to have been received in the Department of Veterans Affairs as of the date of receipt in Social Security Administration. The receipt of such an application (or copy thereof) by the Department of Veterans Affairs will not preclude a request for any necessary evidence.

(Authority: 38 U.S.C. 5105)

[26 FR 1570, Feb. 24, 1961]

§ 3.154 Injury due to hospital treatment, etc.

A formal claim for pension, compensation, dependency and indemnity compensation or any statement in a

38 CFR Ch. I (7-1-02 Edition)

communication showing an intent to file a claim for disability or for death benefits resulting from the pursuit of a course of vocational rehabilitation, hospitalization, medical or surgical treatment, or examination under Department of Veterans Affairs laws may be accepted as a claim.

(Authority: 38 U.S.C. 1151)

[27 FR 11887, Dec. 1, 1962]

CROSS REFERENCES: Effective dates. See § 3.400. Disability or death due to hospitalization, etc. See § 3.800(a).

§ 3.155 Informal claims.

(a) Any communication or action, indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.

(b) A communication received from a service organization, an attorney, or agent may not be accepted as an informal claim if a power of attorney was not executed at the time the communication was written.

(c) When a claim has been filed which meets the requirements of § 3.151 or § 3.152, an informal request for increase or reopening will be accepted as a claim.

[26 FR 1570, Feb. 24, 1961, as amended at 52 FR 27340, July 21, 1987]

CROSS REFERENCES: State Department as agent of VA. See § 3.108. Report of examination or hospitalization—as claim for increase or to reopen. See § 3.157.

§ 3.156 New and material evidence.

(a) A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decisionmakers.

Department of Veterans Affairs

§3.157

Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

(Authority: 38 U.S.C. 501, 5103A(f), 5108)

(b) New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of §20.1304(b)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(Authority: 38 U.S.C. 501)

(c) Where the new and material evidence consists of a supplemental report from the service department, received before or after the decision has become final, the former decision will be reconsidered by the adjudicating agency of original jurisdiction. This comprehends official service department records which presumably have been misplaced and have now been located and forwarded to the Department of Veterans Affairs. Also included are corrections by the service department of former errors of commission or omission in the preparation of the prior report or reports and identified as such. The retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly

except as it may be affected by the filing date of the original claim.

[27 FR 11887, Dec. 1, 1962, as amended at 55 FR 20148, May 15, 1990; 55 FR 52275, Dec. 21, 1990; 58 FR 32443, June 10, 1993; 66 FR 45630, Aug. 29, 2001]

CROSS REFERENCES: Effective dates—general. See §3.400. Correction of military records. See §3.400(g).

§3.157 Report of examination or hospitalization as claim for increase or to reopen.

(a) *General.* Effective date of pension or compensation benefits, if otherwise in order, will be the date of receipt of a claim or the date when entitlement arose, whichever is the later. A report of examination or hospitalization which meets the requirements of this section will be accepted as an informal claim for benefits under an existing law or for benefits under a liberalizing law or Department of Veterans Affairs issue, if the report relates to a disability which may establish entitlement. Acceptance of a report of examination or treatment as a claim for increase or to reopen is subject to the requirements of §3.114 with respect to action on Department of Veterans Affairs initiative or at the request of the claimant and the payment of retroactive benefits from the date of the report or for a period of 1 year prior to the date of receipt of the report.

(Authority: 38 U.S.C. 5110(a))

(b) *Claim.* Once a formal claim for pension or compensation has been allowed or a formal claim for compensation disallowed for the reason that the service-connected disability is not compensable in degree, receipt of one of the following will be accepted as an informal claim for increased benefits or an informal claim to reopen. In addition, receipt of one of the following will be accepted as an informal claim in the case of a retired member of a uniformed service whose formal claim for pension or compensation has been disallowed because of receipt of retirement pay. The evidence listed will also be accepted as an informal claim for pension previously denied for the reason the disability was not permanently and totally disabling.